

BEFORE THE  
ILLINOIS COMMERCE COMMISSION

PEOPLE OF THE STATE OF ILLINOIS )  
 )  
Complaint to Suspend Tariff )  
Changes Submitted by Ameren )  
Illinois and to Investigate ) Docket Nos.  
Ameren Illinois Rate MAPP ) 13-0501 and  
Pursuant to Sections 9-201, ) 13-0517 (Cons.)  
9-250, and 16-108.5 of the )  
Public Utilities Act. )  
 )  
AMEREN ILLINOIS COMPANY d/b/a )  
AMEREN ILLINOIS )  
 )  
Revisions to its Formula Rate )  
Structure and Protocols )

Wednesday, July 30, 2014

Springfield, Illinois

Met, pursuant to notice, at 1:30 P.M.

BEFORE :

DOUG SCOTT, Chairman  
JOHN T. COLGAN, Commissioner  
ANN MCCABE, Commissioner  
MIGUEL DEL VALLE, Commissioner  
SHERINA E. MAYE, Commissioner (in Chicago)

APPEARANCES:

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(Appearing on behalf of Ameren  
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14                      (Appearing on behalf of the People  
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16           JULIE SODERNA  
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20                      (Appearing on behalf of the Citizens  
21                      Utility Board via videoconference)

22          MIDWEST LITIGATION SERVICES, by  
23          Robin A. Enstrom, RPR, CSR  
24          CSR No. 084-002046

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1 PROCEEDINGS

2 CHAIRMAN SCOTT: Again, appreciate  
3 everybody's patience with us.

4 Commissioner Maye, hello.

5 COMMISSIONER MAY: Hello, Chairman  
6 Scott.

7 CHAIRMAN SCOTT: We were talking to  
8 you before, and we just didn't know if you were  
9 mad at me; you just didn't want to respond to me  
10 or not.

11 All right. Very good. We'll get  
12 going now.

13 Well, heck, we're out of time; so  
14 we're --

15 (Laughter.)

16 CHAIRMAN SCOTT: Pursuant to Section  
17 200.850 of the Commission's Administrative Rules,  
18 I now convene oral argument before the Illinois  
19 Commerce Commission in Docket Nos. 13-0501 and  
20 13-0517 consolidated.

21 This is a Complaint to Suspend Tariff  
22 Changes submitted by Ameren Illinois and to  
23 investigate Ameren Illinois Rate MAPP pursuant to  
24 Sections 9-201, 9-250, and 16-108.5 of the Public

1       Utilities Act.

2                       With me in Springfield are  
3       Commissioner Colgan, Commissioner McCabe, and  
4       Commissioner del Valle. With us in Chicago is  
5       Commissioner Maye. I'm Chairman Scott.

6                       As the Commission noticed to the  
7       parties, the scope of their oral argument will  
8       encompass any issues argued in the parties'  
9       briefs. Oral argument in this case was noticed  
10      for today, July 30, 2014, at 1:30 P.M., and all  
11      participants should have received both the notice  
12      and the schedule for today's oral argument.

13                      As stated in our notice, in addition  
14      to the topics already identified, the parties  
15      should also be prepared to answer any questions  
16      regarding the record or the pertinent law.

17                      There are four parties participating  
18      in today's arguments. Parties may divide their  
19      allotted time between initial argument and  
20      rebuttal and, in Ameren's case, surrebuttal. So  
21      please let us know before you begin if you plan  
22      to reserve time.

23                      In terms of the order of  
24      presentation, as indicated in the agenda, we will

1 start with Ameren, follow with the Staff of the  
2 Illinois Commerce Commission, continue with the  
3 Citizens Utility Board, and then with the Office  
4 of the Attorney General. Then we'll use the same  
5 order for rebuttal.

6 We have one timely received exhibit  
7 for today's oral argument from Ameren Illinois.

8 Timekeeper Nicole will also be  
9 monitoring the time in Springfield. So you  
10 should be cognizant of your time usage, and we  
11 will attempt to give the presenter a warning one  
12 minute before your time's expired. So, for  
13 example, if you want to reserve two minutes -- if  
14 Ameren wanted to reserve two minutes from their  
15 ten, Nicole would give you a signal at seven  
16 minutes, then, so that you would know you have  
17 one minute left in your opening argument. If you  
18 go over at that point, then -- then you may end  
19 up losing the rebuttal time there.

20 Again, please let the Commissioners  
21 and the timekeeper know if you're reserving any  
22 time for rebuttal or surrebuttal. To keep things  
23 on schedule, your time allotment is inclusive of  
24 Commission questions and any related answers.

1                   Turning now to oral argument, first  
2       we'll hear --

3                   ASSISTANT IN CHICAGO:  Chairman  
4       Scott?

5                   CHAIRMAN SCOTT:  Yes.

6                   ASSISTANT IN CHICAGO:  My apologies  
7       to interrupt.

8                   Would you like to see Ms. Soderna  
9       when she argues, or are you okay the way it is  
10      now?

11                  CHAIRMAN SCOTT:  When she argues, I  
12      think that's fine.

13                  ASSISTANT IN CHICAGO:  Okay.

14                  CHAIRMAN SCOTT:  Thank you.

15                  First, we'll hear from Ameren through  
16      it's attorney Bert Sturtevant.

17                  Mr. Sturtevant, you have ten minutes  
18      for your initial presentation, rebuttal, and  
19      surrebuttal.  Would you like to reserve any time?

20                  MR. STURTEVANT:  Yes, Mr. Chairman.  
21      I would like to reserve two minutes for rebuttal  
22      and one minute for surrebuttal.

23                  CHAIRMAN SCOTT:  Very good.  And if  
24      you're more comfortable sitting or standing,

1       either way, that's fine.

2                   MR. STURTEVANT:   Okay.   Thank you.   I

3       think I will prefer to stand.

4                   CHAIRMAN SCOTT:   That's quite all

5       right.   Very good.

6                   UNIDENTIFIED IN SPRINGFIELD:   Can

7       they hear if you stand?   Can they hear in

8       Chicago?

9                   CHAIRMAN SCOTT:   Is the microphone

10      on?

11                  MR. STURTEVANT:   Yes, the microphone

12      is on.

13                  CHAIRMAN SCOTT:   Can you hear that,

14      Commissioner Maye?

15                  COMMISSIONER MAYE:   Yes, I can hear.

16                  CHAIRMAN SCOTT:   Very good.

17                  Go right ahead.

18                  MR. STURTEVANT:   Thank you.

19                  Good afternoon, Mr. Chairman,

20      Commissioners.   My name is Albert Sturtevant.   I

21      represent Ameren Illinois Company.

22                  It is not disputed that the formula

23      rate law, which I will refer to as EIMA,

24      prohibits changes to the formula rate structure



1 in an annual update and reconciliation  
2 proceeding. Changes to the formula rate  
3 structure are made in a Section 9-201 proceeding.  
4 The EIMA makes this clear in two separate  
5 provisions, and the Commission has confirmed this  
6 limitation.

7 This case is about what constitutes  
8 the structure. Until this case there was a  
9 general understanding at the Commission that the  
10 structure was what is in the 12 schedules and 11  
11 appendices that you have before you in Ameren's  
12 Exhibit 2.5, and I would urge you to take a look  
13 at those schedules and appendices and flip  
14 through them because they contain all of the  
15 detailed calculations and methodologies that make  
16 up the formula that produces the formula rate.

17 Changes to the schedules and  
18 appendices have been routinely addressed in  
19 separate Section 9-201 proceedings by both Ameren  
20 and ComEd. In other words, the status quo has  
21 been working fine up till now.

22 In this case, however, Staff witness  
23 Ebrey made a proposal to change the status quo  
24 and define the structure to include just two

1 summary schedules. Those are marked as Schedules  
2 FR A-1 and A-1 REC contained on pages 2 and 3 of  
3 Exhibit 2.5. The ALJPO adopts this  
4 interpretation.

5               So what does this mean? It means  
6 that the remaining 10 schedules and 11 appendices  
7 contained in Exhibit 2.5 that you have before  
8 you, including all of the detailed calculations  
9 and methodologies that produce the formula rate,  
10 are not the structure of the formula and that all  
11 of those detailed calculations and methodologies  
12 in the remaining schedules and appendices can be  
13 changed in every and any annual update  
14 proceeding.

15               So some of the things that, under the  
16 ALJPO definition of structure -- I'm sorry. Some  
17 of the things that would not be contained within  
18 the ALJPO's definition of structure because they  
19 are not contained on Schedules A-1 or A-1 REC  
20 would include any reference to FERC Form 1,  
21 which, as you know, is the source of formula cost  
22 inputs. There is no reconciliation interest  
23 calculation with the interest rate on Schedules  
24 A-1 or A-1 REC, the ALJPO's definition of the

1 structure. Those calculations are contained on  
2 Schedule A-4. And the ROE collar calculation is  
3 also not contained in what the ALJPO would define  
4 as structure. It's contained in Schedule A-3.

5 So what are the consequences of the  
6 ALJPO's determination as to what the structure  
7 constitutes? It means, as I have said, any party  
8 can, in its pending annual update filing, propose  
9 changes to all the schedules and appendices other  
10 than FR A-1 and FR A-1 REC.

11 So a utility could propose changes to  
12 the schedules and appendices that are to its  
13 financial advantage. For example, the utility  
14 could propose to increase rate base by the amount  
15 of budget payment plan balances which would allow  
16 them to earn a greater return on their  
17 investment. There are other examples that we set  
18 forth in our briefing.

19 Other parties could propose to change  
20 the formula, like, to any of the calculations or  
21 the methodologies contained in the so-called  
22 non-structure schedules and appendices in every  
23 update case, and I think we're already seeing  
24 examples of this. We have Intervenors in AIC's

1 current rate case -- or current update case  
2 proposing a change to the formula calculation of  
3 reconciliation interest notwithstanding the fact  
4 that such proposals have been rejected twice in  
5 separate proceedings.

6 So why are the ALJPO's conclusions a  
7 problem? There are at least three main reasons:

8 First of all, it creates a  
9 meaningless distinction. A common sense review  
10 of Exhibit 2.5 shows that the formula structure  
11 is more than FR A-1 and A-1 REC. Those two  
12 schedules don't even mention FERC Form 1, the  
13 source of cost input data. How do you get from  
14 FERC Form 1 to the formula rate? The  
15 calculations and methodologies in the rest of the  
16 schedules and appendices.

17 So, for example, if you look at page  
18 2 of Exhibit 2.5, you will see there is one line  
19 and one line only in Schedule FR A-1 which the  
20 ALJPO would call the structure for rate base.  
21 That's \$2 billion reflected in a single line. As  
22 everybody knows, rate base contains a variety of  
23 different components and calculations to produce  
24 it. Those calculations and those separate

1 components are all contained in Schedule B-1 on  
2 page 8, which, under the ALJPO's definition,  
3 would not be part of the structure and could be  
4 changed routinely in every update case.

5 Drawing this line between structure  
6 and not structure at FR A-1 constitutes an  
7 arbitrary distinction. All the calculations and  
8 methodologies in the formula work together to  
9 produce the formula rate and so are logically  
10 part of the structure.

11 Second, the ALJPO's conclusion  
12 injects unnecessary complexity into the formula  
13 rate setting process. Formula ratemaking  
14 consists of three -- or considers three revenue  
15 requirements: the revenue requirement in effect  
16 during the applicable calendar year -- so for an  
17 update filed in 2014, that would be 2013 -- the  
18 revenue requirement that would have been in  
19 effect had all the actual cost information been  
20 known -- so, again, for the year 2013 -- and the  
21 revenue requirement for the filing year, which,  
22 in a 2014 update, would be 2014.

23 But if the formula can change every  
24 year in any update, any change in 2014 could not

1 be readily reflected in the revenue requirement  
2 in effect -- already in effect in 2014. It would  
3 be too late for that. And when 2014 is  
4 reconciled, the reconciliation revenue  
5 requirement would be based on a different formula  
6 than what it's being reconciled against,  
7 producing the proverbial apples-to-oranges  
8 comparison.

9                   Lastly, the ALJPO is contrary to the  
10 EIMA's requirement that the formula rate operate  
11 in a standardized manner. The formula rate was  
12 set for Ameren in 12-0001. The annual  
13 proceedings then update the costs in the formula.  
14 As this Commission has recognized in Docket  
15 12-0293, the Act specifically prohibits the  
16 Commission from modifying the performance-based  
17 formula rate. But the ALJPO's definition would  
18 allow changes to all the calculations and  
19 methodologies that make up the formula to occur  
20 in any annual update; thus presenting --  
21 preventing the formula rate from operating in a  
22 standardized manner.

23                   Thank you.

24                   CHAIRMAN SCOTT: Thank you, Mr.

1 Sturtevant.

2 We will now hear from Jessica Cardoni  
3 and Michael Lannon representing Staff of the  
4 Illinois Commerce Commission. You will have  
5 eight minutes, and would you like to reserve any  
6 time?

7 MR. LANNON: We'll reserve if --  
8 whatever time, if we have any, after Ms. Cardoni  
9 goes.

10 CHAIRMAN SCOTT: Very good.

11 MR. LANNON: Good afternoon,  
12 Mr. Chairman, Commissioners, Commissioner Maye in  
13 Chicago. Staff thanks you for the opportunity to  
14 be here today.

15 I have some general comments to make,  
16 and then I will turn this argument over to my  
17 colleague Attorney Cardoni.

18 First, I'd like to just look at your  
19 authority in setting rates. As you know, costs  
20 must be prudently incurred and be reasonable in  
21 order to set rates that are just and reasonable.  
22 Both of those standards cloak you with enormous  
23 discretionary authority. This is true in both  
24 traditional rate cases and it is also under EIMA.

1       Nowhere, however, do you have the authority to  
2       set unjust and unreasonable rates.

3               Ameren's petition -- or position  
4       contends, however, that a formula rate structure  
5       that includes FR A-1, FR A-1 REC, all other  
6       schedules and appendices except for work  
7       papers -- well, their position is that FR A-1, FR  
8       A-1 REC, all other schedules and appendices  
9       constitute the formula rate, but they do not  
10      include work papers. Ameren has never been able  
11      to identify where in EIMA this vague demarcation  
12      exists. Ameren also has failed to explain what a  
13      work paper is and how it differs from any other  
14      schedule and appendices.

15             Ironically, under Ameren's theory, it  
16      appears to take a degree of your discretionary  
17      authority and invest itself with that in making  
18      the determinations of what are work papers and  
19      what are not work papers. Only Ameren, under  
20      their position, would make that decision. The  
21      work papers or non-work papers would come to you  
22      already labeled as such, and under their  
23      position, they must stay as they are.

24             Now, that would lock you into what



1 would need a 9-201 review and what would not need  
2 a 9-201 review if you're going to make any  
3 changes to even any row or column on an Excel  
4 sheet. Moreover, if the Commission cannot adopt  
5 certain adjustments to these columns or rows in a  
6 formula rate proceeding, then the Commission  
7 could face the circumstance where you would  
8 knowingly approve an unjust and unreasonable rate  
9 if you adopt Ameren's position.

10 Our Staff's position is premised on  
11 the proposition that you may not set unreasonable  
12 and unjust rates. You can only set rates that  
13 you believe are just and reasonable.

14 Last one I'd like to make before I  
15 turn it over is the General Assembly chose not to  
16 define structures and protocols or subschedules,  
17 work sheets, or any other supporting  
18 documentation a utility may file with its formula  
19 rate case. This results in ambiguities that you  
20 are free to define as you feel fit.

21 Consequently, Staff recommends  
22 structures and protocols -- consequently, Staff  
23 recommends that you adopt definitions of  
24 structures and protocols that are consistent with

1 Staff's position, reject Ameren's position, and  
2 retain your inherent discovery -- or inherent  
3 authority in setting only just and reasonable  
4 rates.

5 And with that, I will turn it over  
6 to --

7 CHAIRMAN SCOTT: Ms. Cardoni.

8 MS. CARDONI: Thank you.

9 Mr. Sturtevant referred to a general  
10 understanding of what the formula rate structure  
11 means, and I would note that we don't deal with a  
12 general understanding at the Commission. We deal  
13 with Commission practices and Commission orders.  
14 And to help understand the issues raised in this  
15 docket, let's look at an example of how the  
16 Commission has applied EIMA in a formula rate  
17 case with a recent order.

18 In Docket 13-0318, ComEd objected to  
19 Staff's adjustment of cash working capital  
20 because it would require changes to certain  
21 schedules, appendices, and work papers. However,  
22 the Commission found that cash working capital  
23 should be calculated using inputs from the year  
24 to which it applies regardless of what schedules,

1       appendices, or work papers would be changed to  
2       make that calculation. No Section 9-201  
3       proceeding was required for approval of those  
4       changes to schedules, appendices, and work  
5       papers. ComEd is appealing your authority, but  
6       Staff maintains that this action is consistent  
7       with EIMA.

8                       To put to rest the continuing  
9       arguments made by Ameren concerning the limits to  
10      Commission authority to approve these  
11      adjustments, Staff is asking you to confirm that  
12      the structure under EIMA is limited to the  
13      schedules specifically set forth in the tariffs.  
14      Staff has no reasonable basis for defining the  
15      structure to be limited to the schedules  
16      specifically set forth in the tariffs.

17                      Under Article 9, the Commission  
18      approves tariffs. Staff and the other parties  
19      review the underlying supporting documentation,  
20      but Commission approval is limited to the tariff.  
21      This is consistent with the Commission's past  
22      practice as EIMA directs and is also practical.  
23      The tariff is what is filed with you, and the  
24      support is merely that -- support.

1 Ameren's filing in a formula rate  
2 case consists of a number supporting documents --  
3 10 additional schedules, 11 appendices, and 22  
4 work papers totaling 242 pages. Section  
5 16-108.5, as Mr. Lannon said, simply doesn't  
6 define schedules, appendices, or work papers. So  
7 Ameren's argument that structures and protocols  
8 includes the tariff and the schedules and  
9 appendices but not the work papers is completely  
10 arbitrary.

11 Let's look at an analogy. What if  
12 Ameren mailed a bill to a resident but the  
13 bill had the wrong address and it pulled the  
14 resident -- it pulled someone else's usage? What  
15 if, instead of your usage, it pulled your  
16 neighbor's? And what if you called up Ameren and  
17 you said, "This isn't my address, and this isn't  
18 my usage"? And what if Ameren said, "We agree  
19 your address is wrong and your usage is wrong,  
20 but unfortunately your account number references  
21 your neighbor's address. So your usage is wrong  
22 on our schedules, but we only change our  
23 schedules once a year. So I'm sorry. You're  
24 just going to have to pay that bill instead"?

1                   This is a nonsensical outcome, but  
2       it's consistent with how Ameren interprets EIMA.

3                   Thank you.

4                   CHAIRMAN SCOTT: Thank you.

5                   The buzzer was effective.

6                   Thank you, Mr. Lannon. Thank you,  
7       Ms. Cardoni.

8                   CHAIRMAN SCOTT: Next we have the  
9       Citizens Utility Board through its attorney Julie  
10      Soderna who is in Chicago.

11                  Ms. Soderna, you'll have eight  
12      minutes. Would you like to reserve any time?

13                  MS. SODERNA: Any of the remaining  
14      time after I present my argument.

15                  CHAIRMAN SCOTT: Very good.

16                  MS. SODERNA: Thank you

17                  CHAIRMAN SCOTT: Thank you.

18                  MS. SODERNA: Good afternoon,  
19      Chairman and Commissioners. My name is Julie  
20      Soderna, and I represent the Citizens Utility  
21      Board. Thank you for offering the accommodation  
22      to present argument in Chicago.

23                  The threshold issue before the  
24      Commission is the definition of the term "formula

1 rate structure" as it is used in Title 16,  
2 Section 180.5, of the Public Utilities Act, which  
3 is also referred to as the Energy Infrastructure  
4 Modernization Act or EIMA, as I'll refer to it.

5 Defining the parameters of this term  
6 will assist the Commission in determining whether  
7 Staff- and Intervenor-recommended accounting  
8 adjustments can be made within an annual formula  
9 rate update proceeding governed by EIMA or  
10 whether those adjustments must be made in a  
11 separate Section 9-201 tariff proceeding.

12 The administrative law judge's  
13 proposed order of May 9th correctly decides that  
14 the Commission should resolve the issues briefed  
15 by the parties in this docket now rather than  
16 waiting on a future rulemaking. CUB agreed with  
17 the proposed order that, in light of constrained  
18 resources relating to the annual formula rate  
19 process, consideration of these issues in this  
20 proceeding is timely and proper.

21 CUB further supports the proposed  
22 order's conclusion that the determinations the  
23 Commission will make regarding this threshold  
24 definition will only apply to Ameren and will not

1       automatically apply to ComEd.

2                       While the Act does not specifically  
3       define the term "formula rate structure," it does  
4       delineate certain protocols which consist of  
5       descriptions of various expenses that shall be  
6       recovered through the formula rate. Some  
7       examples include incentive compensation, pension  
8       and other post-employment benefits, and severance  
9       costs. Some of these descriptions are  
10      qualitative -- such as, incentive compensation --  
11      and others are quantitative, as with the  
12      amortization guidelines for certain expenses.  
13      There does not appear to be controversy about  
14      what constitutes a protocol considering the  
15      delineation in the statute, but the Act is clear  
16      that each of these protocols is nonetheless  
17      subject to a determination of prudence and  
18      reasonableness consistent with Commission  
19      practice and law.

20                      Therefore, even with these  
21      established, defined protocols to which the Act  
22      prohibits changes in the annual formula rate  
23      update, the Commission retains the discretion to  
24      ensure the amount allowed in rates is just and

1 reasonable.

2                   Thus the Commission's obligation in  
3 reviewing a formula rate update is far more than  
4 simply plugging FERC Form 1 data into tariff  
5 sheets. As a general matter, the Act does not  
6 prohibit the Commission from changing the values  
7 that get plugged into the formula. It only  
8 prohibits the Commission from changing the  
9 formula rate structure as it was approved in the  
10 initial formula rate proceeding.

11                   The proposed order properly defines  
12 the term "formula rate structure" as Ameren's  
13 currently effective formula rate tariff, which is  
14 encapsulated in Schedules FR A-1 and FR A-1 REC.  
15 These schedules compose the Commission-approved  
16 tariff set forth as Rate MAP-P. Ameren's formula  
17 rate revenue requirement and its reconciliation  
18 revenue requirement are reflected in a formula  
19 rate tariff on Schedules FR A-1 and FR A-1 REC,  
20 for "reconciliation." In Ameren's initial  
21 formula rate proceeding, Docket No. 12-0001, the  
22 Commission approved these schedules as Ameren's  
23 formula rate tariff. Thus the proposed order's  
24 conclusion that these tariff sheets constitute



1       the formula rate structure is entirely  
2       reasonable, appropriate, and legally sustainable.

3               If the Commission agrees with the  
4       proposed order that only Schedules FR A-1 and FR  
5       A-1 REC constitute the formula rate structure,  
6       then the Commission has already answered the  
7       question of what changes require a Section 9-201  
8       proceeding, that is, only changes to FR A-1 and  
9       FR A-1 REC or changes to the statutorily defined  
10      protocols require a separate 9-201 proceeding.

11              While the Act prohibits the  
12      Commission from changing the protocols or the  
13      formula rate structure within the annual formula  
14      rate update proceeding, there's no explicit  
15      proscription in the Act that forbids the  
16      Commission from adopting certain ratemaking  
17      adjustments.

18              Thus, if the Commission determines a  
19      ratemaking adjustment is required to produce a  
20      just and reasonable rate, it can make such  
21      adjustment to Ameren's supporting work papers  
22      and schedules as long as such change does not  
23      disturb Schedules FR A-1 or FR A-1 REC and is  
24      otherwise compliant with the Act.

1                   So, under Mr. Sturtevant's example  
2     with regard to the ROE collar and those type of  
3     calculations, those -- changes to those  
4     fundamental -- the underlying methodology to  
5     those calculations could not be done because it's  
6     not compliant with other provisions of EIMA.

7                   If Ameren's preferred definition of  
8     formula rate structure would prevail, it would  
9     undermine the Commission's regulatory obligation  
10    to ensure that Ameren's rates are just and  
11    reasonable because any change to the amount  
12    allowed for certain expenses that is effectuated  
13    through supporting work papers or schedules could  
14    arguably require a separate 9-201 proceeding. If  
15    that were the case, Staff and Intervenor  
16    accounting adjustments could be litigated  
17    endlessly and likely never be resolved in time  
18    for inclusion in the relevant year's formula rate  
19    update. This result is clearly absurd given that  
20    the General Assembly ensured that the ratemaking  
21    standards under Title 9 of the Act, which  
22    obligate the Commission to approve only just and  
23    reasonable rates, would be upheld under EIMA.

24                  Assuming the Commission agrees with

1 the proposed order's definition of formula rate  
2 structure, to which all parties except Ameren  
3 agree, there's no need then for the proposed  
4 order's suggestion that the Commission will  
5 review future proposed changes on a case-by-case  
6 basis to determine whether a 9-201 proceeding is  
7 necessary. This approach is administratively  
8 inefficient and unnecessary and largely negates  
9 the purpose of the second phase of this  
10 proceeding.

11 CUB therefore requests that the  
12 Commission adopt the exceptions it proposed in  
13 its brief on exceptions.

14 And I'll reserve my remaining time  
15 for rebuttal. Thank you.

16 CHAIRMAN SCOTT: Thank you, Ms.  
17 Soderna. You'll have two minutes remaining then.  
18 Thank you.

19 And last we have Sameer Doshi from  
20 the Office of the Attorney General.

21 Mr. Doshi, I apologize if I  
22 mispronounced your name. You'll have eight  
23 minutes, and would you like to reserve any time?

24 MR. DOSHI: Thank you, Chairman

1 Scott. You got my name just right.

2 CHAIRMAN SCOTT: Okay.

3 MR. DOSHI: And I'd like to reserve  
4 any remaining time at the end of my presentation  
5 for rebuttal.

6 CHAIRMAN SCOTT: Very good. Go right  
7 ahead whenever you're ready.

8 MR. DOSHI: Good afternoon.

9 I'd like to address an issue or set  
10 of issues that my colleagues did not address in  
11 their presentations so far today. They ably  
12 addressed many issues related to the structure  
13 and protocols of the formula rate, but one issue  
14 they did not address that was extensively  
15 discussed in briefing was whether these issues  
16 should be resolved through a ratemaking that  
17 might apply to both Commonwealth Edison Company  
18 or ComEd as well as Ameren.

19 Now, we've been litigating these  
20 so-called bifurcated issues in this docket since  
21 last October 10th when the administrative law  
22 judges decided that the proposal of Staff witness  
23 Ebrey should be considered in a secondary or  
24 bifurcated phase of this proceeding. It's been

1       nearly ten months now.

2                       We know from evidence introduced into  
3       the record as well as Staff's comments in  
4       briefing that a rulemaking is overdue by two  
5       years. It was in Docket No. 11-0721 -- in the  
6       order of Docket No. 11-0721 that the Commission  
7       first indicated the need for a rulemaking in this  
8       case. That was in May of 2012, over two years  
9       ago. No rulemaking has thus been initiated.  
10      Staff indicated in testimony that other  
11      rulemakings have taken almost three years to  
12      resolve. We are now in the fourth of ten  
13      scheduled years of formula ratemaking for the two  
14      large electric utilities in Illinois. If the  
15      rulemaking were initiated at this time, it could  
16      take until the end of the sixth or seventh year  
17      of formula ratemaking to finally resolve these  
18      issues.

19                    Having already litigated this case or  
20      the bifurcated proceeding or phase of this case  
21      for ten months, the Commission should not now  
22      discard all of this work and order a rulemaking  
23      that would implicate both Ameren and ComEd.

24                    Moreover, Commission cases do not

1       have the force of res judicata. The appellate  
2       court has consistently held that the Commission  
3       has the authority to address each matter before  
4       it freely even if the matter involves issues  
5       identical to those in a previous case. Cases  
6       such as Illinois American Water Company v. the  
7       Commission from the 3rd District, 2001, and  
8       Mississippi River Fuel Corporation v. the  
9       Commission, from 1953, indicate that the  
10      Commission has the power to deal with each  
11      situation before it regardless of how it may have  
12      dealt previously with a similar or identical  
13      situation.

14                   These principles are relevant because  
15      just last week, on July 23rd, the administrative  
16      law judge in Docket No. 14-0316, which concerns  
17      only Commonwealth Edison Company, decided that a  
18      similar bifurcated phase of that docket shall be  
19      initiated which would consider the identical  
20      issues that my colleagues have discussed --  
21      whether certain portions of Commonwealth Edison  
22      Company's annual formula ratemaking filings --  
23      filing sheets may be changed in the annual update  
24      or whether they require a Section 9-201

1 proceeding to change. That proposed order  
2 indicates that the bifurcated phase of that  
3 docket should be resolved by November 30th of  
4 this year.

5 So, under the approach that the  
6 People and I believe Staff and CUB favor, by  
7 November 30th of this year these issues could be  
8 resolved for both Ameren and ComEd, rather than  
9 waiting two or three years until two thirds or  
10 more of the way through the ten-year formula rate  
11 process or formula rate period to resolve how  
12 formula ratemaking should happen.

13 It's common for the Commission to  
14 resolve issues that are partially of statutory  
15 interpretation as they may apply to different  
16 utilities according to each utility's factual  
17 circumstance in separate cases.

18 Just this year the Commission, in  
19 five separate dockets, established policy  
20 findings for the delivery and evaluation of  
21 statutorily required energy efficiency programs  
22 under Sections 8-103 and 8-104 of the Act as they  
23 related to ComEd, Ameren, DCEO, Peoples Gas and  
24 North Shore Gas, and Nicor Gas in Docket Nos.

1       13-0495, 0498, 0499, 0549, and 0550. Notably, in  
2       all five of these cases -- or I should say in  
3       each of the five cases, the Commission arrived at  
4       a different conclusion as to what percentage of  
5       the statutory goal for energy efficiency savings  
6       the respective utility would be authorized to  
7       achieve. ComEd was authorized to achieve 40  
8       percent of its goal. Ameren was authorized to  
9       achieve 51 percent of its electric savings goal  
10      and 66 percent of its gas savings goal. DCEO was  
11      authorized to reach 65 percent of its electric  
12      target and 9 percent of its gas target, and there  
13      were also different results for Peoples Gas and  
14      North Shore as well Nicor.

15               Moreover, this is not merely a  
16      question of statutory interpretation. This case  
17      relates to facts that are specific to Ameren.  
18      Indeed, direct and rebuttal testimony by Staff  
19      witnesses Mill and Stafford -- excuse me --  
20      Ameren witnesses Mill and Stafford as well as  
21      Staff witness Ebrey were filed. If this were  
22      merely a statutory interpretation case, there  
23      should be no reason why expert testimony was  
24      needed; yet it was. And in this very room in



1 January or February of this year, those witnesses  
2 were cross-examined in an evidentiary hearing.  
3 Clearly, this case involves questions of law and  
4 fact.

5 Finally, I'd like to note that in its  
6 brief on exceptions and reply brief on exceptions  
7 Ameren suggested that it is somehow being denied  
8 equal protection, apparently, under the U.S.  
9 Constitution and/or the Illinois Constitution  
10 based on the idea that these bifurcated issues  
11 might be resolved one way for Ameren and in a  
12 different way for ComEd.

13 I'd like to note that the Illinois  
14 Supreme Court case that Ameren cites on page 19  
15 of its brief on exceptions, *City of Urbana v.*  
16 *Andrew N.B.*, from 2004, indicates that equal  
17 protection applies to similarly situated  
18 entities. It's not clear that ComEd and Ameren  
19 are similarly situated although they are both  
20 large Illinois electric utilities. But even  
21 granting that they are similarly situated, the  
22 case also states that equal protection prohibits  
23 arbitrary differential treatment.

24 Because both -- because the

1 bifurcated issues would be litigated for both  
2 ComEd and Ameren in the specific evidentiary  
3 context of each utility in this docket as well as  
4 Docket 14-0316, there would be no arbitrary  
5 differential treatment, rather any differential  
6 outcome would be rational. Indeed, Ameren  
7 admits, at page 19 of its brief on exceptions,  
8 that rationality, under the case of Greer v.  
9 Illinois Housing Development Authority, is the  
10 standard for evaluating whether differential  
11 treatment by the government is acceptable as it  
12 applies to different entities. There's no  
13 fundamental right or suspect class here. We're  
14 talking about electric utilities.

15 I'd like to reserve the rest of my  
16 time.

17 Thank you very much.

18 CHAIRMAN SCOTT: About 30 seconds.  
19 Thank you, Mr. Doshi.

20 Okay. Mr. Sturtevant, I believe  
21 you -- did you -- refresh my memory -- reserved  
22 two and then one minute?

23 MR. STURTEVANT: Two and then one,  
24 yes. That's correct, Mr. Chairman.

1                   CHAIRMAN SCOTT: Very good. So  
2     you'll have two minutes whenever you're ready.

3                   MR. STURTEVANT: Thank you, Mr.  
4     Chairman, Commissioners.

5                   By way of rebuttal, I'll address the  
6     AG's arguments first -- the question of whether  
7     this should be considered in a rulemaking. And  
8     it has been AIC's position all along that this  
9     matter should be considered in a rulemaking.

10                  The ALJPO states that the outcome of  
11     this proceeding will not be automatically applied  
12     to ComEd, but it is hard to see how that is the  
13     case. Staff has asked the Commission to define  
14     the statutory term "structure" as it relates to  
15     AIC's formula rate schedules and appendices.  
16     ComEd has substantially the same formula rate  
17     schedules and appendices. So it's similarly  
18     situated; and yet the ALJPO and the AG suggest  
19     that the definition of "structure" could be  
20     different for ComEd even though it is similarly  
21     situated to AIC.

22                  In other words, what the ALJPO and  
23     the AG are saying is that AIC's structure could  
24     be FR A-1 and FR A-1 REC while ComEd's structure

1       could be FR A-1, FR A-1 REC, and all of ComEd's  
2       other schedules. Since this is a statutory term,  
3       the Commission cannot define a statutory term in  
4       EIMA differently with respect to AIC and ComEd.  
5       It would be arbitrary for it to do so.

6               Second, I would like to address the  
7       question I think that came up in a couple of the  
8       arguments regarding the prudence and  
9       reasonableness of the Commission's adjustment.

10              Ameren has said all along and  
11       continues to say the Commission retains its  
12       authority to make adjustments to the formula rate  
13       inputs for prudence and reasonableness. And I  
14       think, in fact, the four completed update cases  
15       and the two pending cases show that the  
16       Commission not only can but has, does, and will  
17       make prudent adjustments. So I don't believe  
18       there's any limitation on prudence in what we are  
19       talking about, rather I think what Ameren is  
20       saying is there's an established practice that  
21       has been working so far. All of the schedules  
22       and appendices are part of the structure, need a  
23       separate 9-201 proceeding to be changed. To  
24       operate in this manner where any part of the

1 schedules and appendices other than A-1 and A-1  
2 REC could be changed would result in the formula  
3 not operating in a standardized manner and would  
4 be a change and inconsistent with how things are  
5 currently working, and I think they're working  
6 okay.

7 CHAIRMAN SCOTT: Thank you, Mr.  
8 Sturtevant.

9 Staff had gone through all of their  
10 time.

11 So we'll turn to Ms. Soderna, and you  
12 have two minutes left, Ms. Soderna.

13 MS. SODERNA: Thank you, Your Honor.

14 I just wanted to make one point  
15 responding to what Mr. Sturtevant has said and  
16 also addressing some comments by Mr. Doshi.  
17 Another example of -- and more maybe directly  
18 applicable to the circumstances -- of where the  
19 Commission has -- has engaged in statutory  
20 interpretation with regard to EIMA -- issues in  
21 EIMA were a couple of ratemaking adjustments that  
22 CUB and the AG made in last year's formula rate  
23 proceedings for both Ameren and ComEd, which  
24 were -- one -- one example is the return on the

1 equity collar adjustment, whether it should be  
2 based on average or end-of-year rate base. And  
3 that was an issue that ultimately there was  
4 testimony on, but ultimately it was an issue of  
5 statutory interpretation. And that issue was  
6 addressed in two separate dockets, one for Ameren  
7 and one for ComEd, and neither utility  
8 complained. And they likely didn't complain  
9 because it went their way. But now it's a very  
10 similar circumstance, we're talking about an  
11 issue of statutory interpretation, but because it  
12 has not been resolved in their favor so that --  
13 from their perspective, they are now crying foul.

14 So I think that wraps it up.

15 CHAIRMAN SCOTT: Okay. Thank you,  
16 Ms. Soderna.

17 Mr. Doshi, you have 30 seconds left.  
18 Lightning round.

19 MR. DOSHI: Thank you, Chairman  
20 Scott.

21 I'd simply like to note, in response  
22 to Mr. Sturtevant's comments about the issue of  
23 differential treatment among ComEd versus Ameren,  
24 that it's not yet clear whether there will be any

1 differential treatment. Thus Ameren's arguments  
2 with respect to any constitutional violation of  
3 equal protection or simply a due process  
4 violation are simply not ripe yet. The 14-0316  
5 docket will be complete by the end of November.  
6 At that time would be the right time for Ameren  
7 to air such arguments.

8 Thank you.

9 CHAIRMAN SCOTT: Thank you,  
10 Mr. Doshi.

11 Mr. Sturtevant, you've got the last  
12 word for one minute.

13 MR. STURTEVANT: Thank you, Mr.  
14 Chairman.

15 Mr. Chairman, Commissioners, I think  
16 in conclusion I will point you to what this  
17 Commission has recognized -- the reason why it's  
18 a problem to change the formula rate structure in  
19 every reconciliation proceeding or every update  
20 proceeding. In 12-0293, the Commission said the  
21 Act prohibits the Commission from modifying the  
22 performance-based formula rate in an update  
23 proceeding, and this is intended to protect both  
24 ratepayers and the utility from frequent

1 inconsistent, complex changes.

2 I would posit that adoption of the  
3 proposed order may simply eliminate the need for  
4 Section 9-201 proceedings because there won't  
5 really be any changes that anyone needs to make  
6 to FR A-1 and A-1 REC.

7 In conclusion, I would say the  
8 formula rate is the result of a formula.  
9 That formula is set forth in the schedules and  
10 appendices that you have in Exhibit 2.5. All of  
11 that constitutes and works together as the  
12 formula structure. To adopt the ALJPO's proposal  
13 would allow the formula to be routinely changed,  
14 increasing complexity, preventing the formula  
15 rate from operating in a standardized manner.

16 Thank you.

17 CHAIRMAN SCOTT: Thank you, Mr.  
18 Sturtevant.

19 Thank you to all the presenters  
20 today. We really appreciate the time that it  
21 takes to put into the oral arguments, and with  
22 that, oral argument is concluded, and we're  
23 adjourned.

24 Thank you very much.



